



U.S. Department of Justice

Environment and Natural Resources Division

90-5-2-1-09729

Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Telephone (202) 514-1111

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VIA EMAIL

Samuel Boxerman, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Re: Consent Decree in *United States et al. v. Continental Carbon Company*, No. 5:15-cv-00290-F (W.D. Okla.)

Dear Sam:

This letter follows up on Continental Carbon Company's periodic updates regarding its progress in meeting its Consent Decree obligations in *United States et al v. Continental Carbon Co.*, Case 5:15-cv-00290-F. As described in prior correspondence, Continental submitted an initial notice of a potential force majeure event on April 28, 2020, covering its carbon black production facilities in Ponca City, Oklahoma and Phenix City, Alabama. The Government Plaintiffs provided an initial response and requested further information and periodic updates in a letter dated May 14, 2020. Since that time, most of the information provided by Continental in its periodic updates has related to its need for an extension of the Ponca City deadlines, which we are considering.

Less information has been provided to justify any potential force majeure claim at the facility in Phenix City, Alabama, where the Consent Decree currently requires additional pollution controls to be continuously operating by December 31, 2022. As we stated in our May 14, 2020 letter, the Consent Decree requires that Continental exercise "best efforts" to fulfill its obligations under the Consent Decree, including "using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay [...] to the greatest extent possible. Consent Decree Par. 70. To help us evaluate Continental's compliance with these provisions and progress towards meeting its Consent Decree deadlines at Phenix City, please provide the following information, and update it as appropriate in further periodic updates:

1. Provide relevant information concerning the new design and technology for the controls at Phenix City described in Continental's April 28, 2020, letter, including whether and when

contracts were completed with the contractors identified in the letter, whether and when a new design has been completed, and whether and when equipment has been purchased for implementation of the design.

2. Provide the new design specifications for the controls at Phenix City.
3. Provide available information on the construction schedule for Phenix City.
4. Identify all contracts that have been executed for Phenix City which Continental will rely upon to install the pollution control technologies that must be in Continuous Operation by December 31, 2022.
5. For Phenix City, provide any information indicating that installation and commencement of operation may be delayed, including the nature and cause of the delay, and any steps taken by Continental to mitigate such delay.

Thank you for your attention to this matter. Please feel free to reach out to me with any questions.

Sincerely,

/s/ Jason A. Dunn

Jason A. Dunn
Senior Attorney
Environmental Enforcement Section

Cc:

Dennis Hetu, Continental Carbon Company
Brad Stevener, Continental Carbon Company
Kellie Ortega, U.S. EPA
Greg Fried, U.S. EPA
Patrick Foley, U.S. EPA
Chris Williams, U.S. EPA
Carlos Evans, U.S. EPA Region 6
Emad Shahin U.S. EPA Region 6
Madison Miller, ODEQ
Richard Groshong, ODEQ
Kendal Steggman, ODEQ
Sydnee Adams, EPA Region 4
Michiko Kono, EPA Region 4
S. Shawn Sibley, General Counsel, ADEM
Doug Carr, Energy Branch Chief, ADEM